

03-407 KOWALSKI v. TESMER

Ruling below: CA 6, 333 F.3d 683

QUESTIONS PRESENTED

The Michigan Constitution, Mich Const 1963, art I, §20, provides that a criminal defendant who pleads guilty shall not have an appeal of right and shall have a right to appointed appellate counsel "as provided by law ." A Michigan statute, Michigan Compiled Law (MCL) 770.3a, provides, with significant listed exceptions, that criminal defendants who plead guilty shall not have appointed appellate counsel for discretionary appeals for review of the defendant's conviction or sentence.

I. Does the Fourteenth Amendment guarantee a right to an appointed appellate attorney in a discretionary first appeal of an indigent criminal defendant convicted by a guilty plea?

II. Do attorneys have third-party standing on behalf of potential future indigent criminal defendants to make a constitutional challenge to a state statute prohibiting appointment of appellate counsel in discretionary first appeals following convictions by guilty pleas where the federal courts properly abstained from hearing the claims of indigent criminal defendants themselves?

CERT. GRANTED: 1/20/04